Liau Nyun Fui v Timbalan Menteri Hal Ehwal Dalam Negeri, Malaysia & Ors

HIGH COURT (IPOH) — ORIGINATING SUMMONS NO 24-628-89
ONG SEE SENG JC
18 DECEMBER 1989

Preventive Detention — Restriction order — Whether issued after unreasonable delay — Effect on validity of order — Restricted Residence Enactment (FMS Cap 39), s 2(i) & (ii) — Interpretation Act 1967, s 54(2)

On 6 May 1989, the plaintiff was arrested and detained in Sabah for allegedly promoting an illegal four digit lottery. On 17 June 1989, the first defendant issued and served on the plaintiff a restriction order under s 2(ii) of the Restricted Residence Enactment (FMS Cap 39) restricting the plaintiff to Bandaran Tapah, Daerah Batang Padang, Perak for a period of three years commencing on the same date. The plaintiff applied to the High Court for a declaration that the restriction order be declared null and void and of no effect on the ground that there was no justification for: (1) the continued detention of the plaintiff from the date of arrest until the date of the restriction order; (2) the restriction order to be issued six weeks after the plaintiff was arrested and detained.

Held, allowing the plaintiff's application:

(1) Section 2 of the Restricted Residence Enactment does not prescribe a time limit but the various steps to be taken pursuant to the section and the implementation of the orders had to be effected within a reasonable time. Further, the Interpretation Act 1967 provides that where no time is prescribed, then anything that shall be done should be done with all convenient speed.

(2) There was no evidence why the restriction order was issued on 17 June 1989 when the plaintiff had been in detention since 6 May 1989. In the circumstances of the case, there was an unreasonable delay in the issue of the restriction order.

Cases referred to

1 *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* v *Cheow Siong Chin* [1988] 1 MLJ 432 (distd)
2 *Assa Singh* v *Menteri Besar Johore* [1969] 2 MLJ 30 (refd)
3 *Re Tan Boon Liat* [1977] 2 MLJ 108 (refd)
4 *Teoh Lean Fatt* v *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* (unreported) (folld)
5 *Andrew s/o Thamboosamy* v *Superintendent of Pudu Prison KL* [1976] 2 MLJ 156 (refd)
6 *PP* v *Koh Yoke Koon* [1988] 2 MLJ 301 (refd)

Legislation referred to

Federal Constitution art 5(i)
Interpretation Act 1967 s 54(2)
Restricted Residence Enactment (FMS Cap 39) s 2(i), (ii)

Karpal Singh for the plaintiff.
Balia Yusuf bin Haji Wahi (Senior Federal Counsel) for the defendants.

Cur Adv Vult

Ong See Seng JC: This is an application by the plaintiff Liau Nyun Fui to this court for a declaration that his restriction to Bandaran Tapah, Daerah Batang Padang, State of Perak under the restriction order dated 17 June 1989 under the hand of the Deputy Home Minister be declared null and void and of no effect. The plaintiff further seeks a consequential order that he need not comply with the said restriction order and the regulations imposed upon him. The plaintiff has cited the following persons as the defendants herein, ie the Deputy Home Minister, Chief Police Officer Perak, OCPD Police District Batang Padang, Perak and the government of Malaysia.

The following facts appear not to be in dispute:

(i) The warrant of arrest and detention for the arrest and detention of the plaintiff at Penjara Kepayan Kota Kinabalu, Sabah was issued by the first named defendant on 27 January 1989.
(ii) The grounds for the arrest was that the plaintiff was a promoter of illegal four digit lottery in Sandakan, Sabah.
(iii) That it was necessary that the plaintiff be restricted to Bandaran Tapah, Daerah Batang Padang, Perak.
(iv) The plaintiff was entitled to appeal within 14 days of service on him of the grounds of his arrest.
(v) On 6 May 1989, the plaintiff was arrested and detained at Penjara Kepayan Kota Kinabalu, Sabah.
(vi) On 17 June 1989, the first named defendant issued the restriction order under s 2(ii) of the Restricted Residence Enactment restricting the plaintiff to Bandaran Tapah, Daerah Batang Padang for a period of three years commencing from 17 June 1989.
(vii) The restriction order was served on the plaintiff on 17 June 1989.
(viii) The plaintiff was transferred from Penjara Kepayan Kota Kinabalu, Sabah to Bandaran Tapah on 18 June 1989.

The plaintiff's case rests on two grounds, namely:

(a) the restriction order restricting the plaintiff to Bandaran Tapah on 17 June 1989 was not complied with strictly;
(b) there was no justification for the continued detention of the plaintiff for the period from 7 May 1989 to 17 June 1989.

As I understand it, counsel for the plaintiff, Mr Karpal Singh, in the course of his submission is not pressing the first ground in view of the explanation of Ag ASP Yap Hock Lee in his affidavit affirmed on 13 September 1989 (encl 5). The court accepts the explanation for the plaintiff being in Bandaran Tapah only on 18 June 1989 instead of 17 June 1989.

Counsel for the plaintiff submits that any arrest and detention of a person has to be in accordance with law. The liberty of a person is a fundamental liberty guaranteed under art 5(i) of the Federal Constitution. He submits that

in the affidavit of the first named defendant affirmed on 19 October 1989 (encl 6), the first named defendant was satisfied that it was not necessary to hold an inquiry under s 2(i) or further inquiry under s 2(ii). In the circumstances, counsel submits there was no justification for the restriction order to be issued only on 17 June 1989, a period of six weeks after the plaintiff had been arrested and detained on 6 May 1989.

Senior federal counsel in his submission stated that the plaintiff must satisfy the court that the plaintiff's detention under s 2(i) of the Restricted Residence Enactment is illegal. Section 2(i) and (ii) must be considered together. The first named defendant was not obliged to issue the restriction order immediately because Form A clearly states that the detention should be until such further order from the minister. Various statements and further investigations have to be made. These investigations have to be done in Sabah. Senior federal counsel also referred to *Cheow Siong Chin*'s case[1] where there was a lapse of two months between the detention order and the restriction order. Senior federal counsel further submitted that the court has a discretion whether or not to grant an order of a declaratory nature. Unless the court is satisfied that there was a traversity of justice, that discretion should be exercised against the granting of the declaration. He further maintains that justice should be for both parties.

Various authorities have been cited to me and I shall refer to some of these authorities. In *Assa Singh* v *Menteri Besar Johore,*[2] Suffian FJ (as he then was) stated and I quote:

> The minister first considers written information and makes or causes to be made such inquiry as he may deem necessary. If it appears to him that there are reasonable grounds for believing any person is required to reside in any particular district he then issues an order for the arrest and detention of such person. After the person is arrested and detained under the first order, the minister then after such inquiry as he may deem necessary makes an order under s 2(ii) of the enactment that from a date to be stated in such order the person would be required to reside in such district or mukim as may be specified in the order.

The above pronouncement found favour with the Supreme Court in *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors* v *Cheow Siong Chin.*[1] In *Re Tan Boon Liat,*[3] Lee Hun Hoe CJ (Borneo) stated that the expression 'in accordance with law' in art 5(i) of the Federal Constitution is wide enough to cover procedure as well. In *Teoh Lean Fatt* v *Timbalan Menteri Hal Ehwal Dalam Negeri Malaysia & Ors,*[4] VC George J held 'that although s 2 does not prescribe a time limit, it cannot but be that each of the various steps to be taken pursuant to this section and the implementation of each of the consequential orders made pursuant thereto had to be effected within a reasonable time'.

Section 54(2) of the Interpretation Act 1967 provides that where no time is prescribed, then anything which shall be done shall be done with all convenient speed.

The law of preventive detention must be construed strictly and in case of doubt the court should lean in favour of the subject — *Andrew s/o Thamboosamy* v *Superintendant of Pudu Prison KL.*[5]

The Supreme Court in *PP* v *Koh Yoke Koon*[6] has held that a detention not in accordance with law is inconsistent with the fundamental right guaranteed by art 5(1) of the Federal Constitution.

Examining the evidence before this court, I find that the first named defendant has stated categorically in his affidavit affirmed on 19 October 1989 (encl 6) that after carefully scrutinizing the written information and documents, he had reasonable grounds for believing that the plaintiff should be required to reside in a certain area, ie Bandaran Tapah. He was satisfied that it was not necessary to hold an inquiry under s 2(i) and he, accordingly, issued the order dated 27 January 1989. After the arrest and detention of the plaintiff on 6 May 1989, the first named defendant issued the restriction order on 17 June 1989. Again, the first named defendant stated that after carefully scrutinizing the relevant written information and documents, he was satisfied that it was not necessary to hold an inquiry under s 2(ii) of the Restricted Residence Enactment. He was satisfied that the plaintiff should be required to reside in Bandaran Tapah.

The place of restriction for the plaintiff remained the same as that stated in the order of 27 January 1989. The arrest and detention of the plaintiff on 6 May 1989 and his continued detention until 17 June 1989 has to be in accordance with law. There is no evidence before me as to why the order of restriction could not be issued earlier than 17 June 1989 when the plaintiff had already been held in detention since 6 May 1989. I agree with counsel for the plaintiff that in *Cheow Siong Chin*'s case,[1] delay was not an issue before that court.

In the absence of an explanation acceptable to this court and in the circumstances of this case, I rule that there has been unreasonable delay in the issue of the restriction order. The plaintiff is entitled to be freed from all the restrictions imposed upon him by the order dated 17 June 1989 under the hand of the Deputy Home Minister and I so declare.

Order:

(1) This court declares that the plaintiff's restriction to Bandaran Tapah, Daerah Batang Padang, Perak on the authority of the restriction order dated 17 June 1989 under the hand of the first named defendant is null and void and of no effect.

(2) This court further declares that the plaintiff is not obliged to comply with the restriction order and the restrictions imposed upon him thereby.
(3) The defendants do pay to the plaintiff such costs as may be taxed by a proper officer of this court on a party and party basis.

Application allowed.

Solicitors: *Karpal Singh & Co.*

Reported by *Azra Moiz*

Noorianti bte Zainol Abidin & Ors v Tang Lei Nge

HIGH COURT (KUALA LUMPUR) — SUIT NO P386 OF 1983
LIM BENG CHOON J
1 DECEMBER 1989

Tort — Negligence — Vehicle collision — Whether head-on collision — Whether collision caused by defendant's negligence

Evidence — Credibility — Test of — Evidence given by witnesses unshaken — Inherent probability or improbability of fact in issue — Conflicting versions — Approach of trial judge towards evidence

Damages (Personal Injury or Death) — Lost years — Available surplus — Sum to be deducted as living expenses — Method of assessing living expenses — Whether assessed on percentage of net prospective earnings of deceased — Civil Law Act 1956, s 8

A motor accident occurred between two vehicles along the Kuala Lumpur/Ipoh trunk road, resulting in the death of the driver and two passengers of one of the vehicles. The plaintiffs are the respective administrator and administratrix of the estate of the deceased persons who claim for recovery of damages under s 8 of the Civil Law Act 1956.

The defendant is the driver of the other vehicle involved in the collision. At the trial, he alleged that the other vehicle had encroached onto his path and collided with his car. The only witness called for the plaintiffs was the officer-in-charge of the investigation into the accident.

Held, finding the defendant wholly liable:

(1) The fact that the evidence given by the witnesses of one party was unshaken or unbroken is not per se an all sufficient acid test of credibility and the inherent probability or improbability of the fact in issue is the prime consideration.

(2) A trial judge should, in considering two conflicting stories, decide which version is inherently probable or improbable.

(3) The damages sustained by both vehicles strongly supported that there was a head-on collision. The evidence showed that the collision was caused by the defendant encroaching onto the path of the other car. It is inherently incredible that the collision was caused because the deceased driver had fallen asleep.

(4) The damage to the front of the deceased's car was so extensive that it is highly incredible that it could have moved to the position as shown in the sketch plan. The driver was so severely injured that it is equally inherently incredible that he would have been able to manoeuvre the car to that position, had the collision taken place at or near the centre of the road as described by the defendant.

(5) On the evidence, the court concluded that the defendant had encroached onto the wrong side of the road and this led to a head-on collision with the deceased's car. There is no contributory negligence as the deceased had no time to take any reasonable step to prevent the collision.

(6) The sum to be deducted as living expenses is the proportion of the victim's net earnings which he spends to maintain himself at the standard of life appropriate to his case. Any sums expended to maintain for the benefit of others do not form part of the victim's living expenses and are not to be deducted from the net earnings.

Cases referred to

1 *Muniandy & Ors* v *PP* [1966] 1 MLJ 257 (refd)
2 *Dato Mokhtar bin Hashim* v *PP* [1983] 2 MLJ 232 (refd)
3 *PP* v *Neoh Wan Kee* [1985] 1 MLJ 368 (refd)
4 *Koay Teik Choo & Ors* v *R* [1956] MLJ 52 (refd)
5 *Yeoh Cheng Han* v *Official Administrator* [1972] 2 MLJ 7 (distd)
6 *Foong Nan* v *Sagadevan* [1971] 2 MLJ 24
7 *Pickett* v *British Rail Engineering Ltd* [1979] 1 All ER 774 (folld)
8 *Thangavelu* v *Chia Kok Bin* [1981] 2 MLJ 277 (folld)
9 *Low Kok Tong* v *Teo Chan Pan* [1982] 2 MLJ 299 (folld)
10 *Chan Heng Wah* v *Peh Thiam Choh* [1988] 1 MLJ 74 (not folld)
11 *Gammell* v *Wilson* [1982] AC 27 (folld)
12 *Harris* v *Empress Motors Ltd* [1984] 1 WLR 212 (folld)

Legislation referred to

Civil Law Act 1956 s 8

G Rethinasamy for the plaintiffs.
Harjeet Singh for the defendant.

Cur Adv Vult

Lim Beng Choon J: A motor accident occurred at about 6am on 18 January 1980 along the Kuala Lumpur/Ipoh trunk road at or near to Kalumpang. As a result of the accident, the driver and the two passengers of one of the vehicles involved in the accident, a Toyota Corolla bearing registration no PQ 9782 ('the Toyota car') sustained severe injuries and they succumbed to the injuries at the District Hospital Tanjong Malim. The driver of the Toyota car was Ahmad bin Jai and the two passengers were Zainol Abidin bin Pandak Audin and Abu Bakar bin Chin. The other vehicle involved in the accident, a Mercedes car bearing registration no WP 4380, was driven by the defendant and there was a passenger in that car, one Wong Kee Nam.

The present action was brought by the respective administrator and administratrix of the estates of the deceased persons for the recovery of damages for the